



July 28, 2000

Mr. Aric Garza
Escamilla & Poneck, Incorporated.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR2000-2868

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137540.

The San Antonio Housing Department (the "department") received a request for the copy of the "Section 8, Investigation Report" on a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information represents a completed investigation for the department. Section 552.022(a)(1) of the Government Code reads in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by section 552.108.

Gov't Code § 552.022(a)(1). Therefore, the report is expressly public pursuant to section 552.022(a)(1). The information contained in the submitted completed report may only be withheld if other law dictates that the information is confidential. You assert that information contained in the investigation is excepted from public disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by

judicial decision.” Thus, section 552.101 in conjunction with other law may make the information contained in the completed report confidential. Therefore, we will consider whether the information contained in the completed investigation is excepted from public disclosure under section 552.101.

Section 552.101 encompasses such confidentiality provisions as found in section 2306.039(b) of the Government Code. Section 2306.039(b) of the Government Code makes confidential “personal financial information submitted by an individual or a family for a loan, grant, or other housing assistance under a program administered by the department or the Texas State Affordable Housing Corporation or from bonds issued by the department.” Gov’t Code §2306.039(b). You assert that the financial information the named individual submitted to the Texas Department of Housing and Community Affairs is confidential under section 2306.039(b) of the Government Code. We agree that the personal financial information that appears on the application processing form is confidential pursuant to section 2306.039(b) of the Government Code. Therefore, the department must withhold this information pursuant to section 552.101 in conjunction with section 2306.039(b) of the Government Code. We have marked the information to be withheld.

Section 552.101 also encompasses the common law and constitutional rights to privacy. Common law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7(1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

Your arguments suggest that the release of the report may implicate the privacy interests of the named individual. After careful review, we do not believe that the documents may be withheld in their entirety under common law or constitutional privacy.

You assert that the remaining financial information contained in the submitted documents is excepted from public disclosure under common law and constitutional rights to privacy. In Open Records Decision No. 268 (1981), this office concluded that the amounts paid by a housing authority on behalf of eligible tenants are not excepted by common law privacy. *See* Open Records Decision No. 268 (1981), *see also* Open Records Decision No. 374 (1983) (determining that a public hospital's accounts receivable showing patient's names and the amounts they owed were open to the public). Prior decisions of this office have found that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 at 9-10 (1992), 545 (1990), 489 (1987), 480 (1987). After reviewing the submitted documents, we find that the remaining financial information represents a financial relationship between a governmental body and the named individual. Therefore, we conclude that the remaining financial information contained in the submitted documents is not excepted from public disclosure by section 552.101 in conjunction with a right to privacy.

Next, you assert that the information represents a compilation of the named individual's criminal history and must be excepted from public disclosure under the common law right to privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). In the request at issue, the requestor is asking for a specific report. Because the requestor seeks a specific report rather than compiled information about the named individual, the request does not fall within the parameters of the *Reporters Committee* decision. Additionally, we find that the contents of the report do not reflect that the department compiled the named individual's criminal history record. Therefore, section 552.101 and the common law right to privacy are inapplicable to the submitted report.

However, we find that the submitted documents contain social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state

pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

We also find that the documents contain motor records and vehicle information that are confidential under section 552.130 of the Government Code. Section 552.130 excepts from required public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, under section 552.130, the department must withhold the Texas driver's license numbers, the VIN numbers, the registration numbers, and the license class information that appear in the submitted documents. We have marked the information that must be withheld pursuant to section 552.130.

In summary, the department must withhold the personal financial information of the named individual that appears in the application processing form under section 552.101 in conjunction with section 2306.039(b) of the Government Code. The department also must withhold the motor records and vehicle information that appear in the submitted documents pursuant to section 552.130. Unless the submitted social security numbers are expressly made confidential by a law enacted after October 1, 1990, the department must release the social security numbers. As the remaining information is not made confidential under section 552.101 of the Government Code, it must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

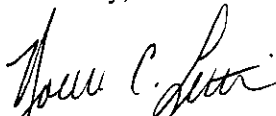
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 137540

Encl. Marked documents

cc: Mr. George F. Seden
Attorney and Counselor at Law
802 South St. Mary's Street
San Antonio, Texas 78205
(w/o enclosures)